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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,) No. P1300CR20081339
)
18 Plaintiff,) Div. 6
)
19 vs.) OBJECTION TO STATE'S
) MOTION TO EXTEND TIME
20 STEVEN CARROLL DEMOCKER,) FOR ADDITIONAL
) DISCLOSURE REGARDING THE
21 Defendant.) 74TH SUPPLEMENTAL
) DISCLOSURE
)
) UNDER SEAL

22 Steven DeMocker, by and through counsel, hereby objects to the State's Motion
23 to Extend Time for Additional Disclosure pursuant to Rule 15.6(d) filed on August 9,
24 2010, and requests that the Court deny the State's Motion. This objection is based on
25 the due process clause, the Eighth Amendment and Arizona counterparts, Arizona Rules

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 AUG 16 AM 11:54 ✓

JEANNE HICKS, CLERK

BY: J. Rues

26 **RECEIVED**

27 AUG 16 2010

28 **DIVISION 6**

1 of Evidence, Arizona Rules of Criminal Procedure and the following Memorandum of
2 Points and Authorities.

3
4 **I. The History of the State's Prior Failures to Comply with Rule 15.**

5 The defense has repeatedly detailed the State's failures to comply with Rule 15
6 and the Court's orders regarding disclosure. After repeated orders precluding evidence
7 under Rule 15 and dismissing death penalty aggravators based on disclosure violations,
8 on April 28, the Court reminded the State that if it did not comply with Rule 15.6, it
9 would not be permitted to use late disclosed evidence at trial. See April 8, 2010 Order,
10 April 28, 2010 Minute Entry, May 11, 2010 Minute Entry.

11 Trial started on May 4, 2010, with jury selection, and opening statements took
12 place on June 3. On June 17, Judge Lindberg became ill and was unable to continue
13 with trial. Judge Darrow was assigned to the case on July 2.

14 On July 7-8, the State late disclosed over 1100 pages, six CDs, and over 11
15 witnesses. The Court heard argument on the Motions relating to late disclosure on July
16 16, 2010, and took the matters under advisement.

17 Since then, the State provided a Notice of additional disclosure on July 15, 2010,
18 relating to some of the items included in the 72nd Supplemental disclosure. On July 20,
19 the State filed a Motion requesting the Court to extend the time to provide disclosure
20 from the 72nd Supplemental disclosure under Rule 15.6(d). The State disclosed four
21 CDs of jail calls and 52 pages of documents as part of a 72nd Supplemental disclosure
22 provided to the defense on July 21. Also on July 21, the State disclosed another CD of
23 jail calls. The defense filed a response to these motions on July 23, 2010. The Court
24 currently has this under advisement as well. The State made a 73rd Supplemental
25 Disclosure in accordance with his Court's Orders on August 5, 2010.

26 The State provided another Notice of additional disclosure on August 6, 2010.
27 As counsel noted in its response to this Notice, counsel speculated that perhaps the State
28

1 meant to file this Notice pursuant to 15.6(b). The Rule requires the State to identify the
2 disclosure, provide notice of the circumstances and explain when the disclosure will be
3 available. The State failed to comply with the Rule and the defense objected on August
4 10, 2010.

5
6 **II. The State's Most Recent Disclosure Violations.**

7 Under 15.6(d), if the State wants to disclose and use information within seven
8 days prior to trial, it must file a motion, supported by an affidavit requesting leave to do
9 so. Ariz. R. Crim. Pro. 15.6(d). The Court may either grant or deny the motion. If the
10 Court grants the motion, the Court may also issue sanctions. In considering whether to
11 grant the motion, the Court is to consider whether "the material or information could not
12 have been discovered or disclosed earlier even with due diligence and the material or
13 information was disclosed immediately upon its discovery."

14 The State has violated this Rule. The State did file an affidavit but did not attest
15 in the affidavit, because it is not true, that "the material or information could not have
16 been discovered or disclosed earlier even with due diligence and the material or
17 information was disclosed immediately upon its discovery."

18 This disclosure includes CDs and transcripts of Renee Girard interviews and
19 these were provided in accordance with the Court's order.

20 *1. Previously Precluded Disclosure*

21 The State's most recent late disclosure includes Statements of James Musgrove
22 (27005-27006) and a letter, resume and supplemental letter from Marlene Appel dated
23 August 6, 2010 (27206-27222). This was disclosed in compliance with the Court's
24 order. This evidence has all been precluded by prior orders of this Court and will not be
25 further addressed.

26 *2. Jail Calls*

1 The State discloses CDs of jail calls on an almost daily basis. The Court
2 previously ordered the State to identify which calls it intended to use and to provide a
3 summary of what it intended to use from each particular call. The cost in terms of time
4 and money for the defense to review and transcribe each and every phone call is
5 staggering and prohibitive.¹ The Court understands this and demanded that the State
6 identify what it intended to use with particularity. The State's disclosure of each and
7 every jail call does not comply with this Court's prior directives regarding jail call
8 disclosures. The Court should therefore preclude all jail calls for which the State has
9 not done what it was ordered to do. Also, the Court should direct the State to properly
10 identify any calls it intends to use and disclose those within three days as previously
11 ordered.

12 The most recent late disclosure also includes the following late disclosed jail
13 phone calls:

- 14 • Four CDs of jail calls from June and July 1-15. These calls were
15 identified in the State's 72nd Supplemental Disclosure and objected to in
16 the Defendant's July 23, 2010 Response to State's Late Disclosure
17 Regarding the 72nd Supplement.
- 18 • July 16-19 jail calls disclosed on July 21. Because these were not
19 disclosed within three days, the calls from July 16-17 are late disclosed
20 pursuant to the Court's prior orders.
- 21 • Three CDs of jail calls from July 23-26 disclosed on July 30. These are
22 disclosed in violation of the Court's orders requiring disclosure within
23 three days.

24
25
26
27 ¹ For example, to transcribe the 13 days of disclosed jail calls between mid-July and August, the estimate for
transcription is over \$2500.

- Five CDs of jail calls from July 28, 29 and August 2, 3, and 4 disclosed on August 5. All of these are precluded by prior order of the Court with the exception of the calls from August 3 and 4.
- Two CDs of jail calls from August 5-6 disclosed on August 9. The calls from August 5 are late disclosed.

The late disclosed phone calls are already precluded by prior order of the Court. See April 13, 2010 Minute Entry. The other calls should be precluded based on the State's failure to identify with particularity, as required by the Court, what portions of what calls it intends to use.

CONCLUSION

Defendant Steven DeMocker, by and through counsel, hereby requests that this Court deny the State's Motion to Extend Time For Additional Disclosure and preclude the evidence late disclosed and improperly identified as outlined above.

DATED this 16th day of August, 2010.

By: 

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ORIGINAL of the foregoing hand delivered for filing this 16th day of August, 2010, with:

1
2 Jeanne Hicks
3 Clerk of the Court
4 Yavapai County Superior Court
5 120 S. Cortez
6 Prescott, AZ 86303

7 **COPIES** of the foregoing hand delivered this
8 this 16th day of August, 2010, to:

9 The Hon. Warren R. Darrow
10 Judge Pro Tem B
11 120 S. Cortez
12 Prescott, AZ 86303

13 Joseph C. Butner, Esq.
14 Jeffrey Paupore, Esq.

15 Prescott Courthouse basket

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